SAHARI MURID

v.

HOCK HUA BANK BHD. & ANOR.

HIGH COURT BORNEO, KUCHING
GEORGE SEAH J
[CIVIL SUIT NO. K. 17 OF 1978]
19 SEPTEMBER 1981

LAND LAW: *Charge - Chargor denies signature on charge - Whether procured by fraud or forgery - Whether chargees' title indefeasible - Charge prepared by solicitor and signed by bank as chargee - Whether solicitor and bank liable - Whether solicitor an agent of bank - Land Code (Cap. 81) ss. 119(1), 215(1) (a), 132(1), 134(1) (2), 143(1) - Whether parties should have referred dispute to Registrar of Titles - Section 136(1).*

The plaintiff sued the defendants claiming:

(1) against the 1st defendant:

(a) a declaration that he was entitled to the land comprised in the charge discharged from all claims thereunder;

(b) an order that the 1st defendant do execute and take all necessary steps to register with the Land Registry of Miri a formal instrument of discharge of the said charge;

(c) an order that the 1st defendant deliver to the plaintiff all such document of title and deed relating to the land comprised in the charge as in their possession or control.

(2) against the 2nd defendant an order that he be solely responsible for repaying all sums owing by virtue of the said loan.

In December 1976, the plaintiff agreed to become the third partner of Sharikat Firma Tukang Perabut dan Binaan, the other partners being one Adam bin Dollah and the 2nd defendant, all the partners to hold equal shares. The principal object of the firm was to make furniture for schools, government departments and statutory bodies in Sarawak. As a condition to being admitted as a co-partner in the firm, the plaintiff agreed in order to raise money for the project, to allow his land at Riam Road, Miri, to be used as security and to be charged to the 1st defendant.

The 2nd defendant had prior to the plaintiff being admitted as a partner applied for a site at Piasau Industrial Estate, Miri and the same was approved in principle in April 1977.

In early January 1977, the plaintiff and his partners applied for a loan from the 1st defendant. At a meeting with the manager of the bank, certain documents were signed by the plaintiff. The partnership account (Ex. P4) had the signatures of both the 2nd defendant and the plaintiff. The other document was filled in by the 2nd defendant and signed by him.

On a loan of RM20,000 being approved a memorandum of charge to be secured by the land belonging to the plaintiff was prepared. On 8 February 1977, it was purported to have been signed by the plaintiff in the presence of the 2nd defendant and attested by a solicitor one S.C. Yee, of the firm of Sim & Yee, in Miri. On receiving the charge, the 1st defendant's manager gave instructions for the loan to be released even though the charge had not been registered. The whole of the loan of RM20,000 was withdrawn by the 2nd defendant, who was authorised to operate the partnership account (Ex. P4).

The memorandum of charge was registered on 25 February 1977.

The plaintiff denied that the signature on the partnership account (Ex. P4) was his and that he had ever signed on the memorandum of charge as chargor before the said solicitor (Ex. D2) as he was out of the country on 8 February 1977. Two witnesses for the plaintiff testified that during the period from 4 February 1977 to 9 February 1977, the plaintiff was on board the vessel M.V. Teripas, of which one witness was the captain and the other the chief officer. The plaintiff worked on board the vessel as a second engineer in February 1977. The desk log book and the passport of the plaintiff were tendered as evidence.

The plaintiff contended that since the purported execution of the memorandum of charge was procured by fraud or forgery, the registration was void against the plaintiff.

Held:

In dismissing the claim

[1] The inevitable conclusion to be drawn from the facts was that the man who followed the 2nd defendant into the chambers of the said solicitor and who signed the memorandum of charge as chargor on 8 February 1977 was an imposter who posed himself off as the plaintiff.

[2] On the evidence adduced, the Court was of the view that the 1st defendant or its branch manager were completely ignorant of the forgery or fraud perpetuated by the 2nd defendant with the aid of a third person unknown and they had acted honestly and in good faith when the said memorandum of charge was presented to the Miri Land Registry office for registration where it was duly registered as an Instrument. They were not a party or privy to this forgery.

[3] The fact that the memorandum of charge was prepared by the solicitor at the request of the 1st defendant did not make the solicitor or his firm, an agent of the 1st defendant. The Court accepted the evidence of the solicitor that at the time of execution, he was not aware that the person who claimed to be the plaintiff was in fact an imposter.

[4] Having regard to the circumstances of the case and serious nature of the allegation involved, the parties were quite justified to resort to Court proceedings instead of referring the dispute to the Registrar for a decision.

[5] In the light of these findings the Court held the plaintiff had failed to prove that the said memorandum of charge and its subsequent registration at the Land Registry had been procured or made by the fraud of the 1st defendant or its agent and that it was void as against the person defrauded, viz, the plaintiff. Since the 1st defendant is the registered chargee of the said memorandum of charge its title is indefeasible.

[6] The Court declined to order the 2nd defendant to be solely responsible for repaying all sum owing by virtue of the said loan as it is a secured debt. As the 2nd defendant was clearly the culprit behind the forgery scheme, the Court in its discretion refused him costs of the proceedings.

[7] Claim against the 1st defendant dismissed with costs to be taxed.

[Claims dismissed.]

For the plaintiff - Jimmy Wee standing in for R. Szetu
For the 1st defendant - Chew Pok Oi
For the 2nd defendant - Voon Wui Tet standing in for Peter Lin/ Ting Jack Ming

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Also found at [1982] CLJ 125